INJUNCTIONS AGAINST THE OPENING OF GAS STORAGE FACILITIES

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A RECENT DECISION FROM THE MEXICAN SUPREME COURT CLARIFIED THE ISSUE AS TO WHETHER STATE COURTS MAY ISSUE INJUNCTIONS AGAINST THE OPENING OF GAS STORAGE FACILITIES RELATED TO THE GAS PIPELINES FOR THE DISTRIBUTION OF NATURAL GAS.

Most state’s procedural codes provide for rules to issue injunctive relief against the construction of new buildings or an order to demolish old buildings that are considered hazardous. From a reading of the decision, private citizens had been filing to obtain injunctive relief to halt the construction of gas storage and distribution facilities in Mexico. While some Federal Circuit courts upheld the constitutionality of having State courts issue these injunctions, other Circuit Courts had been refusing to confirm the constitutionality of their issuance, because this would constitute an infringement of the exclusive jurisdiction of the Energy Regulatory Commission.

In order to clarify the Law, the Mexican Supreme Court seized jurisdiction to decide which view should prevail. The Supreme Court found that it was the exclusive jurisdiction of the Federal Regulatory agencies. In its’ decision, the Supreme Court found that injunctions to halt the construction of hazardous buildings were meant to address disputes between private parties provided their activities does not fall within the jurisdiction of the administrative authorities. According to the Supreme Court, when a construction of a project is based on an authorization issued by the Secretariat of Energy through its’ Energy Regulatory Commission, for the transportation, storage and distribution of natural, it is clear that said agency issued said permit based on its own findings that the project would satisfy a public need, and that it was authorized conditioned upon the licensee’s satisfaction of specific safety requirements, which the authority must ascertain are all met. Under this scenario, it is not legally valid for a private party, by way of a court issued injunction, to halt these types of projects, because this falls without its jurisdiction.
Per articles 35 of the Regulations to Article 27 of the Constitution regarding Hydrocarbons and article 11 of the Energy Regulatory Commission’s Law, this is the agency that is charged with addressing any irregularity with regards to the issuance of a permit of this nature, by way of a complaint, and to make an administrative ruling on the same.

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